

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

SHIRLEY HANCOCK, )  
Plaintiff, ) Civil No. 02-1228-KI  
v. ) OPINION AND ORDER  
KOIN TV, INC., Emmis Communications )  
Corporation, Lee Enterprises, Inc., )  
Defendants. )  
\_\_\_\_\_  
)

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1 KING, Judge:

2 Plaintiff Shirley Hancock brings a claim for age and sex discrimination against KOIN-  
3 TV, Emmis Communications Corporation and Lee Enterprises. Plaintiff alleges violations of  
4 Oregon law and the federal Equal Pay Act. Before the court is defendant Lee Enterprises'  
5 motion (# 14) to dismiss plaintiff's first, second and third claims for relief. For following reasons,  
6 I grant defendant's motion.

7 **FACTUAL BACKGROUND**

8 Plaintiff makes the following allegations in her amended complaint:

9 Plaintiff was a television anchorwoman and reporter with the television station KOIN-TV  
10 in Portland. She worked for KOIN-TV for approximately 18 years, until June 14, 2001, when  
11 she was told that her contract would not be renewed.

12 During most of the period of plaintiff's employment, KOIN-TV was owned by Lee  
13 Enterprises ("Lee"). On or about October 1, 2000, defendant Emmis Communications  
14 Corporation ("Emmis") purchased KOIN-TV from Lee. Emmis was plaintiff's employer from  
15 the point of the purchase of KOIN-TV to the point at which plaintiff left the television station.

16 In March 2001, KOIN-TV and Emmis laid off approximately 20 employees. Almost all  
17 all of these employees were 40 years of age or older. In June 2001, KOIN-TV and Emmis laid  
18 off a meteorologist and a news director. They also reassigned anchorman Mike Donahue to a  
19 field anchor and senior reporter position. On June 14, 2001, Hancock was told that her contract  
20 would not be renewed. Hancock, Donahue and the assistant news anchor were each over 40  
21 years old. KOIN-TV and Emmis retained all of its male news anchors.

22 Prior to her termination plaintiff had complained several times to the station general  
23 manager (who remained working for KOIN after it was sold to Emmis) that she was receiving a  
24 salary considerably less than that of male co-anchors and in relation to other primary anchors in  
25 the Portland area. Plaintiff had also previously complained to the station manager about working  
26 conditions including: derogatory comments by management and others about women and  
27 homosexuals; bullying of females by an on-air male worker; bullying and shouting obscenities by  
28 the then news director suggesting that he was trying to get rid of plaintiff and Donahue; male

1 workers routinely talking about women's body parts; and the then news director's directive that  
 2 the news team should "whore up the news."

3 Plaintiff was told that the then news director would not be going anywhere, and that she  
 4 was too sensitive. No further investigation was conducted nor any action taken to correct what  
 5 she perceived to be poor working conditions.

#### 6 **LEGAL STANDARDS**

7 A motion to dismiss under Rule 12(b)(6) will only be granted if it "appears beyond doubt  
 8 that the plaintiff can prove no set of facts in support of his complaint which would entitle him to  
 9 relief." Gilligan v. Jamco Development Corp., 108 F.3d 246, 248 (9th Cir. 1997). Normally,  
 10 the review is limited to the complaint, and all allegations of material fact are taken as true and  
 11 viewed in the light most favorable to the non-moving party. Id. The court, however, may  
 12 consider whether conclusory allegations follow from the description of facts alleged. Holden v.  
 13 Hagopian, 978 F.2d 1115, 1121 (9th Cir. 1992).

#### 14 **DISCUSSION**

##### 15 I. Defendant's Motion to Dismiss Plaintiff's First and Second Claims for Relief

16 Plaintiff's first and second claims allege age and sex discrimination in violation of ORS  
 17 659A.030. Defendant argues that plaintiff's first and second claims are barred by the statute of  
 18 limitations. The statute of limitations applicable to plaintiff's claims requires that all actions be  
 19 commenced within one year after the occurrence of the unlawful employment practice. ORS  
 20 659A.875. Lee sold KOIN to Emmis on or about October 1, 2000. Defendant argues that any  
 21 claims against it must have been brought within one year of that date, at the very latest. Plaintiff's  
 22 complaint was filed on June 14, 2002. Because plaintiff alleges no claims against defendant Lee  
 23 on or after June 14, 2001, defendant argues that plaintiff's first and second claims against Lee are  
 24 barred.

25 Plaintiff argues that her claims are not barred against defendant Lee because of the  
 26 "continuing violation doctrine." Under that doctrine, "a systematic policy of discrimination is  
 27 actionable even if some or all of the events evidencing its inception occurred prior to the  
 28 limitations period," as long as the most recent event occurs within the limitations period. Sosa v.

1 Hiraoka, 920 F.2d 1451, 1455 (9th Cir. 1990); Draper v. Coeur Rochester, Inc., 147 F.3d  
 2 1104, 1108 (9th Cir. 1998). A continuing violation does not have to be based on a widespread  
 3 policy, but can also be proven by demonstrating a series of related acts against a single person.  
 4 Sosa, 920 F.2d at 1455. Oregon courts also have borrowed the concept of the continuing  
 5 violation doctrine as found in federal case law. See Dobie v. Liberty Homes, Inc., 53 Or. App.  
 6 366, 369, 632 P.2d 449 (1981).

7 The continuing violation doctrine is routinely applied in discrimination cases. Defendant  
 8 correctly points out, however, that most of the reported cases applying the doctrine deal with a  
 9 single employer. Plaintiff relies on *one* case in her brief, Wilson v. Wal-Mart Stores, 158 N.J.  
 10 263, 729 A.2d 1006 (1999), to support the proposition that the doctrine should be applied in  
 11 this situation, where a claim against a predecessor employer would otherwise be barred by the  
 12 statute of limitations.

13 The facts of Wilson are very similar to the case at bar. The plaintiff worked for K-Mart,  
 14 which then sold its assets to Wal-Mart. Plaintiff was discharged by Wal-Mart, and brought a  
 15 claim for sexual harassment against both K-Mart and Wal-Mart. K-Mart moved to dismiss the  
 16 claim against it, arguing that any claim for sexual harassment against K-Mart must have been  
 17 brought within two years (the applicable statute of limitations under New Jersey law) of the date  
 18 K-Mart was sold to Wal-Mart. The New Jersey Supreme Court held that the plaintiff's  
 19 complaint was timely if it had been filed within two years of the last act of continuous harassment.  
 20 Wilson, 158 N.J. at 274, 729 A.2d at 1011. The court remanded the case to allow plaintiff to  
 21 show that her supervisor's discriminatory conduct represented a "continuum of harassment" that  
 22 began prior to the date K-Mart was sold to Wal-Mart, occurred while both she and her  
 23 supervisor were employed by K-Mart, and continued to the date Wal-Mart terminated plaintiff.  
 24 Id. at 275, 729 A.2d at 1012.

25 Similarly, plaintiff in this case alleges that the discriminatory acts by KOIN-TV  
 26 employees spanned the ownerships of both Lee and Emmis, and ended only with the eventual  
 27 termination by Emmis. Therefore, plaintiff argues, although the complaint was filed more than a  
 28 year after Lee sold KOIN-TV, the complaint was filed within one year of the statute of

1 limitations period after she was fired, and is therefore timely. Relying on Wilson, plaintiff argues  
2 that her claims against Lee are not barred.

3 I decline to follow the New Jersey Supreme Court's decision in Wilson. The court  
4 applied the "continuing violation" doctrine to a situation that involved a change in ownership, with  
5 little support for such an extension of the doctrine. One of the dissenting justices specifically  
6 noted that the cases the majority relied on for the continuing violation theory were cases in which  
7 courts extended liability beyond the statute of limitations, but only when there was *one* employer  
8 at issue. Wilson, 158 N.J. at 279, 729 A.2d at 1014. I agree with the dissent that the majority's  
9 decision to extend the doctrine to impose liability on a predecessor employer is a "novel" one.

10 Moreover, I fail to understand the Wilson majority's reliance on the doctrine of successor  
11 liability in finding that untimely claims could be viable against a predecessor employer.

12 Presumably recognizing the complicated nature of the successive ownerships, in addition to the  
13 continuing violation doctrine, the court also discussed the doctrine of "successor liability."

14 Ordinarily, a successor corporation does not assume the liabilities of its predecessor. Rego v.  
15 ARC Water Treatment Company of PA, 181 F.3d 396, 401 (3<sup>rd</sup> Cir. 1999). However,  
16 application of the successor liability doctrine protects a plaintiff where the offending employer is  
17 substituted by another company such that plaintiff is not suddenly left without recourse. Rojas v.  
18 TK Communications, Inc., 87 F.3d 745, 750 (5<sup>th</sup> Cir. 1996). I do not see why the New Jersey  
19 Supreme Court applied the doctrine in the Wilson case, nor has plaintiff pleaded any facts that  
20 suggest the doctrine is relevant here. The question before the court is whether the *predecessor*,  
21 *not the successor*, can be held liable. Plaintiff conceded at oral argument that had no  
22 discriminatory actions taken place since those alleged during Lee's ownership, plaintiff's claim  
23 would be barred by the statute of limitations. Any wrongful conduct by Emmis, if proven, would  
24 be the sole basis for a claim within the statute of limitations. To find that such conduct by Emmis  
25 resurrects plaintiff's claims against Lee would amount to holding a predecessor corporation liable  
26 for the acts of its successor. On the facts contained in plaintiff's pleadings, I am unwilling to do  
27 that.

Other than the Wilson case, plaintiff has not pointed the court to any authority that suggests her theory is the proper resolution of this case. Nor has plaintiff pleaded facts that would otherwise provide a cause of action under ORS 659A.030. I grant defendant Lee's motion to dismiss plaintiff's first and second claims for relief. Plaintiff has leave to re-plead against defendant Lee should plaintiff become aware of facts during discovery that if proven would support a claim against Lee under the same statutory provision.

II. Defendant's Motion to Dismiss Plaintiff's Third Claim for Relief

Plaintiff's third claim for relief alleges retaliation and wrongful discharge. KOIN was sold to Emmis in October, 2000 and plaintiff was not terminated until June, 2001. Therefore, defendant Lee is not the proper defendant with respect to any claims regarding her termination. Plaintiff concedes that her claims for retaliation and constructive discharge are proper only as against Emmis. Accordingly, plaintiff's third claim for relief is dismissed as against Lee Enterprises.

## CONCLUSION

For the foregoing reasons, defendant's motion to dismiss (# 14) is granted. Plaintiff's first and second claims for relief are dismissed as against defendant Lee without prejudice. Plaintiff's third claim is dismissed as against defendant Lee with prejudice.

IT IS SO ORDERED.

DATED this 22nd day of January, 2003.

/s/ Garr M. King  
GARR M. KING  
United States District Court Judge